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BRYAN JAY SINGER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MICHAEL F. EGAN, III.
Plaintiff,

vs.

BRYAN JAY SINGER,
Defendant.

Case No. 14-00177 SOM-BMK
MEMORANDUM IN SUPPORT

1 **MEMORANDUM IN SUPPORT**

2

3 **I. PRELIMINARY STATEMENT**

4 This action involves fabricated, salacious claims that Plaintiff Michael Egan
5 (“Plaintiff ” or “Egan”), a Nevada resident, was victimized by sexual misconduct
6 of a California resident 15 years ago in Hawaii. The assertion of these antiquated
7 claims was orchestrated to coincide with the worldwide release of a major motion
8 picture directed by Defendant Bryan Singer (“Singer”), and accompanied by a
9 parade of press conferences, interviews and other public preening by Plaintiff and
10 his counsel to maximize public attention on the eve of the picture’s release. The
11 timing of this action and inclusion of its detailed, sordid (and provably false)
12 allegations are nothing more than tools being used to embarrass, harass, and
13 pressure Singer and precipitate a shakedown of a perceived “deep pocket.”

14 In addition to the lack of substantive merit, this action must be dismissed
15 pursuant to Rule 12(b)(2) because there is no personal jurisdiction over Singer in
16 the State of Hawaii. Plaintiff’s entire case is premised on events that allegedly
17 occurred during two trips to Hawaii between August 1, 1999 and October 31, 1999
18 (the “Relevant Period”). The evidence conclusively establishes, however, that
19 Singer was not in Hawaii during the Relevant Period. Indeed, neither was Egan.
20 In a prior lawsuit he filed alleging similar misconduct against others, Egan
21 testified under oath that he never traveled to Hawaii as he now is claiming.
22 Because the evidence establishes that no wrongful acts occurred in this State as
23 alleged in the Complaint – the only basis asserted for the exercise of personal
24 jurisdiction over Singer – the action must be dismissed pursuant to FRCP Rule
25 12(b)(2).

26 This case represents an egregious display of forum shopping, using
27 fabricated events in Hawaii to assert claims from 15 years ago. Plaintiff and his
28 counsel seek to exploit special legislation enacted by the Hawaii Legislature to

1 extend the statute of limitations on certain sexual abuse cases that otherwise would
2 be barred. The legislation, Hawaii Revised Statutes, Section 657-1.8, states that
3 otherwise-barred sexual assault claims can be asserted in the Hawaii state court
4 system for a period of two years after April 24, 2010 (later extended to four years
5 after that date). Relying on the extended limitations period, Plaintiff sues for
6 alleged sexual misconduct that he claims – as he must – occurred in Hawaii.

7 Egan cannot succeed. Beyond the fact that he sued in federal court – as
8 opposed to state court as specifically required in the special legislation – there is
9 no basis for asserting jurisdiction over Singer. Contrary to the allegations in the
10 Complaint, Singer was simply never in Hawaii during the Relevant Period.¹
11 Nothing in the Hawaii legislation extending the statute of limitations for sexual
12 abuse cases changes the fact that a case cannot proceed unless there is personal
13 jurisdiction over the defendant. Because neither general nor specific personal
14 jurisdiction can be established over Singer, hailing him across the Pacific Ocean to
15 defend these outrageous claims 15 years after the alleged wrongful conduct
16 occurred would offend traditional notions of fair play and substantial justice.

17 18 **II. FACTUAL BACKGROUND OF THIS DISPUTE**

19 In 2000, Plaintiff filed a lawsuit under the name “Michael E.” against Marc
20 Collins-Rector, Chad Shackley, Brock Pierce and Digital Network, Inc. in the
21 California state court system, designated Los Angeles County Superior Court Case
22 No. LC 053103, alleging that he was sexually assaulted (the “Prior Action”). In
23 his Complaint in this case, Egan also alleges facts relating to his association with
24

25 ¹ The allegations of the Complaint also lack merit because the allegations of
26 wrongdoing were contradicted by Plaintiff under oath in a 2003 deposition. Plaintiff in the
27 earlier litigation sued other defendants for similar alleged acts of sexual abuse. When asked if
28 anyone else was involved in such wrongdoing, Plaintiff admitted there were no other
participants. See Section II, *infra*. Plaintiff’s testimony from the prior litigation establishes the
falsity of his current claims.

1 Collins-Rector and Shackley and their involvement in the alleged events in the
2 State of Hawaii that are at issue in this case.

3 On November 24, 2003, Egan was deposed in the Prior Action. True and
4 correct copies of excerpts from that deposition are attached as Exhibit “A” to the
5 Declaration of Martin D. Singer (the “M. Singer Decl.”). In that deposition,
6 Plaintiff testified that he did not travel to Hawaii when other parties, including
7 another plaintiff in the Prior Action, traveled to Hawaii. In fact, Plaintiff testified
8 under oath that he had never taken a trip outside the continental U.S.! M. Singer
9 Decl., Exh. “A,” 43:18-20. He stated that this was because his mother would not
10 give him permission to travel. M. Singer Decl., Exh. “A,” 44:10-23. Plaintiff
11 further testified that there were no other people who participated in any of the
12 wrongful conduct besides Collins-Rector, Shackley and Pierce. M. Singer Decl.,
13 Exh. “A,” 73:20-74:3.

14 Singer is an internationally renowned director of major motion pictures. In
15 1999, he directed the motion picture “X-Men” (the “Picture”). Pre-production and
16 production of the Picture took place in Canada between August 1, 1999 and
17 October 31, 1999. B. Singer Decl., ¶ 4. Singer was in Canada during the period in
18 question; Singer never traveled to Hawaii during the relevant period other than
19 working on the Picture during the relevant time period; Singer only traveled for a
20 few days in California and to New England to see family between August 1, 1999
21 through October 31, 1999.

22 On April 16, 2014, Plaintiff filed this action. He alleges counts for
23 intentional infliction of emotional distress, battery, assault and invasion of
24 privacy, all arising from alleged actions in Hawaii during the Relevant Period.
25 Other than the alleged acts during these two trips, there is no other basis for an
26 assertion of personal jurisdiction over Singer in this Court.

27 Under Section 657-1.8, Hawaii Revised Statutes, “[f]or a period of two
28 years after April 24, 2010 [which has recently been changed to April 24, 2012], a

1 victim of child sexual abuse that occurred in [Hawaii] may file a claim in a circuit
2 court of [Hawaii] against the person who committed the act of sexual abuse if the
3 victim is barred from filing a claim against the victim’s abuser due to the
4 expiration of the applicable civil statute of limitations that was in effect prior to
5 April 24, 2012.” Plaintiff relies on this statute in order to assert the alleged
6 conduct from 15 years ago.

7
8 **III. IT IS PLAINTIFF’S BURDEN TO ESTABLISH THAT SINGER HAS**
9 **SUFFICIENT CONTACTS WITH HAWAII TO WARRANT THE**
10 **EXERCISE OF PERSONAL JURISDICTION**

11 The only basis for the assertion of personal jurisdiction over Singer alleged
12 in the Complaint is the alleged sexual abuse in Hawaii during the Relevant Period.
13 However, as shown below, Singer was simply not in the state during that period.²
14 Plaintiff cannot refute Singer’s evidence that he was not in Hawaii during the
15 Relevant Period; in fact, Plaintiff has admitted under oath that he was not there
16 either. Therefore, Plaintiff cannot sustain his burden of establishing personal
17 jurisdiction over Singer, and the action must be dismissed pursuant to
18 Rule 12(b)(2).

19 Due process precludes a court from asserting jurisdiction over a non-
20 resident defendant unless he has sufficient “minimum contacts” with the forum
21 state so that the exercise of jurisdiction “does not offend traditional notions of fair
22 play and substantial justice.” *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).
23 Under the “minimum contacts” analysis, this Court must either have general
24 jurisdiction or specific jurisdiction over Singer in order to proceed. *Doe v. Unocal*
25 *Corp.*, 248 F.3d 915, 923 (9th Cir. 2001).

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28 ² Singer denies committing wrongful acts against Egan, in Hawaii, or elsewhere at any
time (B. Singer Decl., ¶ 3), but for purposes of this Motion has focused on the Relevant Period.

1 General jurisdiction, properly invoked, allows a federal court to hear any
2 cause of action against the defendant, even one unrelated to defendant's activities
3 in the forum state. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445,
4 (1952). General jurisdiction is present only if the non-resident's activities in the
5 forum are "substantial" or "continuous and systematic." The standard for
6 establishing general jurisdiction is "fairly high" and requires contacts substantial
7 enough to approximate physical presence. *Bancroft & Masters, Inc. v. Augusta*
8 *Nat'l Inc.*, 223 F.3d 1082, 1083 (9th Cir. 2000); *Helicopteros Nacionales Day*
9 *Columbia S.A. v. Hall*, 466 U.S. 408, 414-16, 104 S.Ct. 1868 (1984).

10 General jurisdiction is clearly lacking in this case. Plaintiff's Complaint
11 alleges no facts whatsoever that would support an assertion of general jurisdiction
12 in Hawaii for claims against Singer. Singer has never resided in Hawaii, (B.
13 Singer Decl., ¶ 7), and there are no other contacts with Hawaii substantial enough
14 to approximate his physical presence there. *Bancroft & Masters*, 223 F.3d at
15 1083. The assertion of general jurisdiction over Singer in Hawaii would,
16 therefore, be improper.

17 Specific jurisdiction must exist in order for Plaintiff's claims to be heard in
18 this Court. Specific jurisdiction exists only when the claim for relief arises
19 directly out of the non-resident's forum-related activities. *Rano v. Sipa Press Inc.*,
20 987 F.2d 580, 588 (9th Cir. 1993). Courts apply a three-part test to determine if
21 the plaintiff has established specific jurisdiction: (1) the nonresident defendant
22 must perform some act by which he purposefully avails himself of the privilege of
23 conducting activities in the forum; (2) the claim must be one which arises out of or
24 relates to the defendant's forum-related activities; and (3) the exercise of
25 jurisdiction must comport with principles of fair play and substantial justice, *i.e.*, it
26 must be reasonable. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987); *Unical*
27 *Corp.*, 248 F.3d at 923.

1 Under Rule 12(b)(2), the court may decide the issue of personal jurisdiction
2 on the basis of affidavits and documentary evidence submitted by the parties, or
3 hold a evidentiary hearing regarding the matter. *Data Disc, Inc. v. Sys. Tech.*
4 *Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Whatever procedure is used,
5 the plaintiff bears the burden of establishing personal jurisdiction. *Unical Corp.*,
6 248 F.3d at 922; *Ziegler v. Indian River Cnty*, 64 F.3d 470, 473 (9th Cir. 1995).³

7 Plaintiff simply cannot meet this burden. As discussed below, Singer was
8 not in the State during the Relevant Period. Furthermore, there are no other
9 forum-related activities upon which an assertion of specific jurisdiction could be
10 based. Therefore, personal jurisdiction does not exist in Hawaii.

11
12 **IV. THE EVIDENCE ESTABLISHES THAT SINGER WAS NOT IN**
13 **HAWAII DURING THE RELEVANT PERIOD AND, THEREFORE,**
14 **THERE IS NO PERSONAL JURISDICTION**

15 Plaintiff's assertion of personal jurisdiction over Singer in Hawaii is entirely
16 premised upon the allegations in the Complaint that alleged sexual abuse occurred
17 during two trips to Hawaii that took place "on or between August 1, 1999 and
18 October 31, 1999." Complaint, ¶ 20. There is no other basis upon which
19 jurisdiction in this state is alleged. However, as set forth below, Singer did not
20 make these trips and was not in Hawaii during the period in question. Personal
21 jurisdiction, therefore, cannot be established.

22 Singer was directing the Picture during the Relevant Period. B. Singer
23 Decl., ¶ 4. During that time, he was preoccupied with pre-production and
24 principal photography in Canada. B. Singer Decl., ¶ 4.

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³ If the Court is inclined to do anything other than grant this Motion, Singer respectfully
28 requests, pursuant to Rule 12(i), that this Court conduct an evidentiary hearing on any disputed
facts that Plaintiff may submit in opposition to this Motion.

1 Indeed, except for a short trip to visit friends in New England in August and
2 a trip to Los Angeles for a few days in September, Singer was in Canada during
3 the entirety of the three months comprising the Relevant Period. B. Singer Decl.,
4 ¶ 4. Singer was never physically present in the State of Hawaii at any time during
5 the Relevant Period. B. Singer Decl., ¶ 5. These facts are confirmed by his
6 business records, including credit card receipts, telephone records, production
7 schedules and payment records. B. Singer Decl., ¶ 6.

8 Significantly, Plaintiff admitted under oath that he also was not in Hawaii at
9 the time of the alleged wrongful conduct. As stated, in the Prior Litigation,
10 Plaintiff testified, under penalty of perjury, that one of the other plaintiffs in the
11 Prior Litigation had traveled outside the continental U.S. with the Defendants in
12 that case, including a trip to Hawaii. However, Plaintiff specifically testified that
13 he did not go to Hawaii and never traveled outside the continental U.S. because
14 his mother would not allow it. M. Singer Decl., ¶ 3 and Exh. "A." The evidence
15 is conclusive that neither Singer nor Plaintiff was in Hawaii during the Relevant
16 Period. The Complaint must be dismissed on that ground.⁴

17
18 **V. DISMISSAL IS IN THE INTERESTS OF JUSTICE; INDEED,**
19 **PLAINTIFF ADMITTED UNDER OATH THAT SINGER DID NOT**
20 **ENGAGE IN WRONGFUL CONDUCT**

21 Even beyond the fact that Singer has no contacts with Hawaii that would
22 satisfy traditional notions of fair play and substantial justice in requiring him to
23 defend in this court, dismissal of this action is in the interests of justice. Here,
24 scurrilous allegations of sexual misconduct are being made 15 years after the
25 alleged conduct took place, on the eve of the worldwide release of a major film

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28 ⁴ In light of the obvious failure to properly investigate the allegations prior to filing this lawsuit, Singer reserves the right to seek appropriate sanctions and reasonable attorneys' fees against Egan's counsel.

1 Singer directed, accompanied by a shameful campaign to widely publicize the
2 allegations and thereby publicly smear and embarrass Singer. The first time
3 Singer became aware of this lawsuit was through the media, followed by a
4 national press conference by plaintiff's counsel, and then a second press
5 conference with plaintiff and his counsel. Martin D. Singer Declaration, ("M.
6 Singer Decl.") ¶ 5. Some of the efforts by Plaintiff and his counsel to obtain the
7 maximum public exposure and create a media frenzy over the four Hawaii sexual
8 assault cases recently filed by Plaintiff in this Court are described in the Motion to
9 Dismiss filed with this Court on May 15, 2014 in the Neuman action, Case No. 14-
10 CV-00190 [ECF No. 10].

11 Furthermore, it is critical to note that in the Prior Litigation, Plaintiff
12 conclusively testified that no one other than the Defendants in that case – Collins-
13 Rector, Shackley and Pierce – were involved in any alleged sexual misconduct. It
14 is exactly for that reason that Singer was not sued in the Prior Litigation. Singer
15 also has stated that he never engaged in any sexual conduct with Egan. B. Singer
16 Decl., ¶ 3.

17 Under questioning about the sexual abuse that he had allegedly endured up
18 to that time, Plaintiff testified in the Prior Litigation as follows:

19 "Q. Was there anybody other than Marc Collins-Rector,
20 Chad Shackley or Brock Pierce who you feel was an
21 integral part of this thing that happened to you?

22 A. Those were the three main in the wolf pack.

23 Q. Was there anybody else?

24 A. There was other people that worked down in the DEN
25 facilities, but partaking in all this stuff I don't think so,
26 no.

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(M. Singer Decl., ¶ 3, Exh. “A.”)⁵

Plaintiff testified under oath in 2003 that the only people who allegedly sexually abused him were the Defendants in the Prior Litigation. That is why he neither sued Singer in the Prior Litigation nor in the succeeding 14 years. For whatever reason, Plaintiff has now chosen to capitalize on what he perceives as an opportunity to assert a claim because of the special Hawaii legislation. Plaintiff has no legitimate basis for asserting this belated claim.

VI. CONCLUSION

Plaintiff cannot sustain his burden of establishing personal jurisdiction under Rule 12(b)(2). The evidence before the Court (1) directly refutes the only allegations in the Complaint that could arguably support an assertion of personal jurisdiction over Singer, and (2) otherwise conclusively establishes that the Complaint is without merit. Therefore, this action should be dismissed pursuant to Rule 12(b)(2).

Dated: Honolulu, Hawaii, May 21, 2014.

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⁵ There is no dispute that Singer never worked in “the DEN [Digital Entertainment Network] facilities.”

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